



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Removal of a Sign Owned or
Controlled by Owen Frevert, Located Along STH
29, Town of River Falls, Pierce County

Case No 97-H-1061

FINAL DECISION

By letters dated March 27, 1997 and June 17, 1997, the Department of Transportation ordered the removal of the sign which is the subject of this hearing. By letter dated June 28, 1997, Owen Frevert requested a hearing to review this order. On November 3, 1997, the Department of Transportation referred this request for hearing to the Division of Hearings and Appeals. Pursuant to due notice a hearing was held in Ellsworth, Wisconsin, on July 9, 1998, before Mark J. Kaiser, Administrative Law Judge.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the PARTIES to this proceeding are certified as follows:

Owen Frevert
W9830 690th Street
River Falls, WI 54022

Wisconsin Department of Transportation, by

Attorney Barbara F. Bird
P. O. Box 7910
Madison, WI 53707-7910

The Administrative Law Judge issued a Proposed Decision in this matter on August 5, 1998. No comments on the Proposed Decision were received. The Proposed Decision is adopted as the final decision in this matter.

Findings of Fact

The Administrator finds:

1. In 1988, Owen Frevert purchased real property from Mark Larson in the Town of River Falls, Pierce County. At the time of the purchase, an outdoor advertising sign existed on

the property. The sign is located along the south side of State Trunk Highway 29 (STH 29) approximately 7000 feet from 1073rd Street. The sign advertised Norry's Barber Shop. A condition of the sale of the property was that Own Frevert "leave the 'Norry's Barber' sign on their land in its present location for a period of ten (10) years without additional cost."

2. The sign was a legal, non-conforming sign pursuant to sec. 84.30(5), Stats. STH 29 is a federal aid primary highway. The subject sign is located within 660 feet of the highway right-of-way and the sign is visible from the main-traveled way of the highway. The area where the sign is located is zoned agriculture.

3. Richard Prissel, a Department of Transportation employee, observed that the subject sign had no message in March, 1996. Mr. Prissel documented that the sign was still without a message in March, 1997. By letter dated March 27, 1997, Mr. Prissel advised Mr. Frevert that it had been blank for over one year and that the Department considered the sign abandoned. The Department ordered the sign removed. Pursuant to sec. TRANS 201.10(f), Wis Admin. Code, a sign that is without advertising matter for a period of twelve months or longer is considered abandoned. A sign that is abandoned loses its legal, non-conforming status and is subject to removal.

4. Shortly after the March 27, 1997, letter a new message was placed on the sign. The sign now advertises Ber-Mark Excavating. The Department issued a second removal order on June 17, 1997.

Discussion

Mr. Frevert does not dispute that the sign was blank for over one year. He argues, however, that it was not his intent to abandon the sign, rather weather conditions and a busy schedule prevented Mark Larson, president of Ber-Mark Excavating, from having a new message painted on the sign for over one year. Mr. Frevert argues that it is unfair to require him to remove the sign because he was unaware until he received the removal order that leaving the sign blank for a one year period would constitute abandonment of the sign.

Although the location of the sign is not eligible for a sign permit, the subject sign was allowed to remain as a legal, non-conforming sign after the sign law went into effect on March 18, 1972, as long as it was maintained. Pursuant to sec. TRANS 201.10(f), Wis. Admin. Code, a sign which is left blank for over a one year period is considered abandoned and an abandoned sign loses its legal, non-conforming status. The Division of Hearings and Appeals does not have the authority to ignore these laws even if the result seems harsh. Additionally, the fact that no one advised Mr. Frevert that the sign would be considered abandoned if it was left blank for twelve months is not a defense to the sign removal order.

In summary, it is undisputed that the subject sign was left blank for a period in excess of twelve months, accordingly it is an abandoned sign. As an abandoned sign it has lost its legal, non-conforming status and must be removed.

Conclusions of Law

The Administrator concludes.

1. Pursuant to sec. TRANS 201.10(f), Wis. Admin. Code, a sign is considered abandoned or discontinued if for a period of twelve months or longer it is composed of obsolete advertising matter or is without advertising matter.
2. Pursuant to sec. TRANS 201.10(2), Wis. Admin. Code, a sign which has been abandoned or discontinued may not be lawfully maintained and continue as a non-conforming sign. A sign which loses its legal non-conforming status is subject to removal.
3. Pursuant to secs. 84.30(18) and 227.43(1)(bg), Wis. Stats., the Division of Hearings and Appeals has the authority to issue the following order.

Order

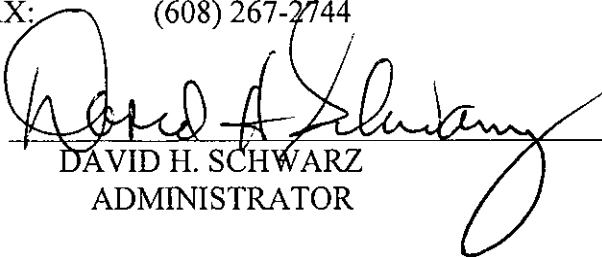
The Administrator orders:

The removal order issued by the Wisconsin Department of Transportation as set forth in its letters dated March 27, and June 17, 1997, is affirmed.

Dated at Madison, Wisconsin on August 25, 1998.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By



DAVID H. SCHWARZ
ADMINISTRATOR